1526 MONEY LAUNDERING — § 943.895(2)(a)4.

Statutory Definition of the Crime

Money laundering, as defined by § 943.895(2)(a)4 of the Criminal Code of Wisconsin, is committed by one who knowingly conducts a transaction designed in whole or in part to [(conceal) (disguise) the nature, location, source, ownership, or control of proceeds obtained through unlawful activity] [avoid a transaction reporting requirement under federal law], and the person knows the proceeds are derived from unlawful activity.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly conducted a transaction[1] involving proceeds.

   "Proceeds" means property or anything of value acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.[2]

2. The proceeds were derived from unlawful activity.[3]

   ADD THE FOLLOWING IF THE ALLEGED UNLAWFUL ACTIVITY INVOLVES A COMMISSION OF A CRIME AND THE UNIFORM INSTRUCTION FOR THAT UNLAWFUL ACTIVITY EXISTS.

   [The State alleges that the proceeds were derived from the unlawful activity of

(insert unlawful activity). The State must prove by evidence which satisfies you beyond a reasonable doubt that the proceeds were derived from (insert unlawful activity).

(Insert unlawful activity) is committed by one who

LIST THE ELEMENTS OF THE UNLAWFUL ACTIVITY AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.][4]

3. The defendant knew that the proceeds were derived from unlawful activity.

Knowledge that the proceeds were derived from unlawful activity does not require knowledge of the specific nature of the unlawful activity involved.[5]

4. The transaction made by the defendant was designed in whole or in part to [(conceal) (disguise) the nature, location, source, ownership, or control of the proceeds obtained through unlawful activity.] [avoid a transaction reporting requirement under federal law.]

Deciding About Purpose and Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

IF FELONY MONEY LAUNDERING IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.[6]

[Determining Value]

[If you find the defendant guilty, you must answer the following question:

("Was the value of the proceeds involved in the transaction more $100,000?"

Answer: "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than $10,000?"

Answer "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than $5,000?"

Answer "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than $2,500?"

Answer "yes" or "no.")

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the proceeds was more than the amount stated in the question.

If you are not so satisfied, you must answer the question "no."]

ADD THE FOLLOWING FOR FELONY CASES INVOLVING MORE THAN ONE VIOLATION "PURSUANT TO A SINGLE INTENT AND DESIGN," AS PROVIDED IN § 943.895(2)(c).[7]

[In determining the value of the total proceeds involved in the transaction, you may consider all violations that you are satisfied beyond a reasonable doubt were committed by

the defendant pursuant to a single intent and design.]

COMMENT

Wis JI-Criminal 1526 was approved by the Committee in October 2022.

Section 943.895(2)(a) was created by 2019 Wisconsin Act 161 [effective date: March 5, 2020].

Wis JI-Criminal 1526 is drafted for the offense defined in Sec. 943.895(2)(a)4. For violations of § 943.895(2)(a)1-2., see Wis JI-Criminal 1524. For a violation of § 943.895(2)(a)3., see Wis JI-Criminal 1525.

The basic offense is a Class A misdemeanor. The penalty increases to a felony if the value of the total proceeds involved in the transaction exceeds specific amounts. See footnote 4, below.

A financial institution that has complied with all applicable money laundering reporting requirements under federal law is not criminally liable under § 943.895(4).

1. Sec. 943.895(1)(a) provides that "'transaction' has the meaning given in § 946.79(1)(f)."

2. This is the definition of "proceeds" provided in § 943.895(1)(a).

3. The statute does not define "unlawful activity," and a review of the legislative history indicates that there was a decision not to do so. If a definition is requested, guidance as to its meaning may be gained from the Black's Law Dictionary (2nd ed.) definition, which in part defines the term as follows:

"An act that is contrary to or violates a law that exists."

The Committee concluded that the term clearly includes criminal conduct, and if criminal conduct is alleged as the unlawful activity the crime should be defined for the jury.

4. The Committee recommends that a complete listing of the elements of the "unlawful activity" be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)]. In the absence of a uniform instruction, the court must develop and present the elements of the alleged unlawful activity.

5. See § 943.895(2)(b).

6. The jury must make a finding of the value of the proceeds if the felony offense is charged

and if the evidence supports a finding that the required amount is involved. Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1957). While value may not, strictly speaking, be an element of the crime, it determines the range of permissible penalties and should be established "beyond a reasonable doubt." The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

The penalties provided in subs. (3)(a) through (e) are as follows:

- if the total value of the proceeds involved in the transaction does not exceed $2,500, the offense is a Class A misdemeanor;
- if the total value of the proceeds involved in the transaction exceeds $2,500 but not $5,000, the offense is a Class I felony;
- if the total value of the proceeds involved in the transaction exceeds $5,000 but not $10,000, the offense is a Class H felony;
- if the total value of the proceeds involved in the transaction exceeds $10,000, the offense is a Class G felony; and,
- if the total value of the proceeds involved in the transaction exceeds $100,000, the offense is a Class F felony.

The questions in the instruction omit the upper limits of the categories for Class I, Class H, and Class G felonies; it is no defense that the value was actually greater than the amount alleged. More than one question may be presented to the jury, however. If the evidence would allow a reasonable jury to find, for example, that the value did not exceed $10,000 but did exceed $5,000, the two relevant questions could be submitted.

7. Section 943.895(2)(c) sets forth the rule relating to the pleading and prosecution of money laundering cases. This subsection allows the prosecution of more than one violation as a single crime if "the violations were pursuant to a single intent and design."

The material in the instruction addresses the situation defined in subsec. (2)(c): more than one violation, pursuant to a single intent and design. There is no Wisconsin case law interpreting this aspect of § 943.895(2)(c). But the Committee's conclusion that it may be dealt with most effectively as part of the value question is supported by the case law on related issues, as described below.

State v. Spraggin, 71 Wis.2d 604, 239 N.W.2d 297 (1976), dealt with the receipt of several articles of stolen property. Spraggin was charged with a felony offense, based on the receipt of multiple stolen articles (valued at more than $500) at one time. The applicable statute, § 943.34, did not have a provision like § 943.895(2)(c), so the court held that lumping multiple articles together was proper only if they were received at one time. If there were separate receipts, separate misdemeanor charges would have been required, and a felony charge could not be supported. The case was presented to the jury as a felony, but the jury found the value of the goods received as $180. The court entered judgment on the basis of the felony conviction, apparently relying on the prosecutor's contention that a 25-inch color TV was worth more than $500. The supreme court reversed, holding that, at most, two misdemeanors were committed.

The Spraggin court held that presenting the case to the jury solely as a felony "was in effect a decision on the grade of the offense, which is clearly an issue only for the jury." (81 Wis.2d 604, 615, citing State v. Heyroth, the case holding that finding value in a theft case is for the jury.) The court went on to point out that there are optional ways of proceeding in a case like this:

Since variances between the allegations and the proof may be beyond the control of the state, see:

People v. Smith (1945), 26 Cal.2d 854, 161 Pac.2d 941; State v. Niehuser (Or. App. 1975), 533 Pac.2d 834; People v. Roberts (1960), 182 Cal.App.2d 431, 6 Cal. Rptr. 161, one option is to charge in the alternative. Likewise, the defense could request, or the state on its own, could submit the alternative charges of a single or multiple receptions, when, as in cases of lesser included charges, see: Devroy v. State (1942), 239 Wis. 466, 1 N.W.2d 875; State v. Melvin (1970), 49 Wis.2d 246, 181 N.W.2d 490, a reasonable view of the evidence reveals that there is a reasonable basis for conviction on either. With the alternatives phrased in terms of separate or joint receptions of multiple stolen items, the jury may decide on the evidence and thereafter grade the offense through the establishment of value.

71 Wis.2d 604, 616-17.

Submitting the issue to the jury seems to be required by the Spraggin case because it goes to "the grade of the offense." This is consistent with the position the Committee has taken in similar situations in the past: if a fact determines whether a different range of penalties applies (e.g., changes a crime from a misdemeanor to a felony or from one class of felony to another), it is for the jury; if a fact only influences the length of possible sentence within a statutory range, it is for the judge.

The Committee concluded that it would be more effective, or at least more efficient, to leave the multiple item decision for the value question alone. The instruction for the offense can be used without change for either a misdemeanor or a felony charge. If satisfied that the offense was committed with regard to "any property," the jury should find the defendant guilty. Then, in determining value, the jury is instructed to "consider all thefts you are satisfied beyond a reasonable doubt were from the same owner and committed by the defendant pursuant to a single intent and design."